

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
STATE OF NEW YORK, et al.

Plaintiffs,

-v-

U.S. IMMIGRATION AND CUSTOMS
ENFORCEMENT, et al.

Defendants.

-----x
JED S. RAKOFF, U.S.D.J.

2020-01-18 LYL

2/18/20
19-cv-8876 (JSR)

MEMORANDUM ORDER

Plaintiffs' motion to compel defendants to produce certifications of compliance prepared pursuant to 8 U.S.C. § 1229(e) is denied. Plaintiffs allege that these documents contain evidence supporting the contention that immigration arrests at New York state courthouses have dramatically increased in response to the ICE Directive at issue in this litigation. Mot. at 2; see Compl. ¶ 6. To that extent, the § 1229(e) certifications are substantially duplicative of the "Field Operation Worksheets" (FOWs), which ICE prepares to document each of its arrests, that the Court has already compelled defendants to produce by March 30. See Transcript of Proceedings re: Conference Held on Jan. 31, 2020 at 9:10, ECF No. 70. Moreover, defendants raise at least a colorable claim that 8 U.S.C. § 1367(a)(2) prohibits them from disclosing § 1229(e) certifications relating to the arrests of aliens whose

claims for certain types of relief are still pending. Answer at 2-3. Although defendants could, with great effort, identify and produce only those certifications relating to arrests of aliens whose such claims have been denied, this burden would greatly exceed the marginal benefit plaintiffs would receive from viewing these § 1229(e) certifications in addition to the FOWs. The Court accordingly finds that discovery of the § 1229(e) certifications is not justified under Fed. R. Civ. P. 26(b)(1).

SO ORDERED.

Dated: New York, NY

February 14, 2020



JED S. RAKOFF, U.S.D.J.